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TURKEY'S INTERNET CENSORSHIP PROBLEM

THE MEDIA ASSOCIATION INTERNET COMMITTEE

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EXECUTIVE SUMMARY:

The Internet is a global system wherein computer networks and worldwide systems are connected to one another electronically. Billions of people are able to have access to all sorts of information through the Internet without any limitations. In this sense, the Internet is like an incredible library that all citizens of the world can freely use. The Internet has no central administration; it cannot be directed by any individual, institution or government. Despite this, every country in the world is working to classify Internet content according to their own priorities.

Turkish Internet Law

In 2007 Turkey promulgated Law No. 5651 to regulate and supervise Internet content. Initially, this law was devised to protect children from harmful content and to prevent the encouragement of suicide, prostitution and drug use, but in the ensuing period it paved the way for the restriction of Turkish society's right to information. Access can be blocked to any content that is not deemed to be in line with Turkish law. In order to block access, the Domain Name and Internet Protocol (IP) methods are employed.

Sample Case: The Problems Experienced with YouTube and Google

YouTube has been banned under the authority vested in Law No. 5651 for approximately three years due to the online sharing of some videos insulting Mustafa Kemal Atatürk, the founder of the Republic of Turkey. Despite the existence of the ban, Internet users are able to bypass it and have access to YouTube using a variety of methods, which brings about the fact that YouTube is still amongst the 10 most visited websites in Turkey. The blocking of all IP addresses used by YouTube to broadcast has resulted in an access block to some websites belonging to Google and using the same IPs. In the face of public reaction, officials emphasized that Google does not pay any taxes in Turkey, changing mass perception of the issue. This view has developed a new notion in Turkish society that YouTube has been blocked because its owner, Google, does not pay taxes, whereas in reality access block and tax issues are independent of one another. The former has to do with freedom of thought, while the latter falls into the responsibility and authority of the Finance Ministry.

Views and Recommendations

While we are faced with a multidimensional problem, it has become clear that censorship will never be able to bring the Internet under full control. Taking away a society's freedom of having access to information is a violation of basic human rights. And as for the technicalities of access bans, they can be overcome using a number of technological possibilities already available. This inconsistency also decreases the position of the law in the eyes of society, while the censorship itself harms the image of Turkey as a developing, democratic nation. It is clear that the access bans imposed by the courts will not bring a lasting solution. Law No. 5651, which regulates the Internet, should be amended in a manner that will support the freedom of thought and expression, and in accordance with the Council of Europe's Convention on Cybercrime. This process of amendment should be conducted via a transparent, participatory and pluralistic method that respects the right of adults to freedom of thought and access to all forms of Internet content. Courts specializing in Internet affairs must be established. Internet journalism should be defined and its journalists should be recognized and fully accredited by public institutions and establishments. The Press Bulletin Authority (BİK) should create the necessary infrastructure to allow for the representation of online journalism in Turkey.



1) THE INTERNET AS A NEW CONDUIT

Internet Usage in Turkey and in the World

The developments in information technology of the last decade have affected Internet communication – which includes all forms of media and the entire world in its network – in many dimensions. This has led to a process wherein single products serve multiple functions, such as technological products like the iPhone, BlackBerry, VoIP and webTV, known as “technological convergence.” This phenomenon has been described by 21st century thinkers such as Henry Jenkins as the democratization of information and has also changed the public's consumption patterns at their very base.

World Internet Usage Statistics ¹⁻²⁻³⁻⁴⁻⁵

- The number of Internet users has exceeded 1.8 billion.
- There are 733 million computers registered in the Internet domain name system.
- There are approximately 192 million domain names.
- There are over 130 million personal web logs (blogs).
- The number of videos uploaded to the Internet exceeds hundreds of millions.
- The number of users has reached more than 500 million for Facebook, 105 million for Twitter and 50 million for LinkedIn.
- 250 billion e-mails are sent and received daily – this translates into 90 trillion emails a year.
- The most-followed user on Twitter is Britney Spears, with 5.2 million followers.
- US President Barack Obama, on the other hand, has 4.5 million followers.
- There are 100,000 applications being used on Twitter and 500,000 on Facebook.
- 55 million short messages are shared on Twitter daily.
- There are 4 billion photos posted to the photo-sharing website Flickr.
- 2.5 billion photographs are uploaded to Facebook each month.
- Everyday 200 million users log on to Facebook.
- 2 billion videos are viewed on YouTube on a daily basis.
- YouTube dominates over 40% of the online video market in the United States.
- Every minute, approximately 24 hours of video is uploaded to YouTube.

Turkey's Internet Statistics ⁶⁻⁷

- Around 28-30 million people over the age of 16 in Turkey are Internet users.
- There are 3.1 million personal computers in the country.
- There are 215,000 domain names in Turkey and 870,000 that belong to Turks but are registered outside Turkey.
- Turkey ranks third in global MSN usage, after the United States and Brazil.
- Youths aged 15-25 spend a daily average of six hours on the Internet. A large portion of this time is spent with e-mail, reading online news and browsing social networking sites.



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How Do Our Online Lives Affect the Way of Our Thinking and the Media?

Today the Internet is no longer just a tool used by professionals; it has entered the everyday lives of people of all age groups and every social status. Without the means provided by the Internet, it would not be possible to provide basic services related to banking, education, healthcare, commerce, entertainment, communication, the state bureaucracy and news gathering. That's why, thinking of the Internet as just one form of media, one workplace or one school is akin to the blind man's description of an elephant - it only tackles the issue in one dimension. In modern societies the Internet resembles the structure of the nervous system in the human body. While evaluating the Internet, we need to take into consideration the dimensions of all possibilities it sets before us.

The Web 2.0 technology that began to be used in 2004 invited Internet users to participate actively and develop their own content much more easily. Through this technology, popular social platforms are used actively by millions of people every day. The possibilities brought by the Internet have democratized information, enabling it to be easily shared by all. For this reason, the Internet access is now a civic right and is viewed as a necessity. The unlimited sharing of information has also brought about brand new philosophical understandings and commercial models along with itself.

Social networking, recreational and friendship websites such as YouTube, Facebook, Twitter, Flickr, MySpace and LinkedIn are parts of the Internet arena along with its other spheres where it is a part of cooperation, organizing, marketing, distribution and education. Fortune 500 companies, international establishments, foundations and universities take their places among social networks and are shared as the part of a two-sided effect, both producing products and coming up with new policies together. Millions of people from different nations and cultures are contributing to the development of a brand new global system and economy through the Internet.

For Turkey, the Internet (Information Society) project is at least as important as the nation's EU bid and the Southeastern Anatolia Project (GAP). The country's economy, education, culture, public administration and democracy should be restructured in light of the means presented by the Internet. In this sense, the e-state project has become a very important development for Turkey.

The possibilities brought about by the Internet are also breaking down conventional economic models of media. The possibilities presented by the increasingly more common laptop computer, 3G Internet and smart mobile devices such as the iPhone and BlackBerry are forcing a change in the way newspapers function. In the near future, when the iPad is expected to be widely used, this will be an indicator of a great digital revolution.

Newspapers are shaped by editors a day in advance, printed and distributed. This period requires significant amount of time and money. But online newspapers can be updated at any moment. It takes a long stint in the archives to access old issues of print newspapers, while accessing back issues of online newspapers and online archives is much faster through the Internet. Thanks to search engines, it is possible to reach many alternative news outlets in various languages. In addition, the opening of articles to public comments in



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online newspapers helps faster recycling of news. The Internet presents us a whole new style of thinking and reader profile. Thanks to the Internet, everyone has started to become their own news editor.

The Need for a Unique and Independent Internet Law

While Internet technologies display rapid development, the same speed has not been achieved with regard to legal regulations governing online activities. Lawmakers see a need for lengthy studies, research and various legal opinions when it comes to making new laws, while innovation on the Internet can reach millions of users in just a few hours. For that reason, regulations in the drafting stage are affected by daily events and quickly become obsolete or lose their relevance.

Even if the Internet bears some characteristics similar to those of conventional press publication activities, it is also very different. The Internet provides an opportunity for everyone to express themselves, while the expansion of Web 2.0 social platforms turns users into individual content creators, even allowing them to become journalists. A digital camera, a computer with an Internet access are all anybody needs to operate as a journalist. For this reason, there is a need for an autonomous law to supplement the regulations that exist within the Radio and Television Law, the Law on Radio and Television Establishment and Publication, and the Press Law.

An Internet website is technically neither a newspaper nor a magazine nor book. The domestic and foreign publication concept is very subjective. For this reason, a number of items stipulated as mandatory in the existing press laws are not applicable to Internet media.

It is impossible to address needs with regard to legislation for the Internet with a single law, as the online environment is very difficult to monitor and control. While bringing order to the Internet, the main goal should be focused not so much on paving the way for supervision and control, but on ensuring the benefit of the society by letting it free. A precautionary measure can unwittingly lead to the obstruction of development. It is very important to regulate the Internet as little as possible and to set technology free whereas the process of legislation along with enforcement should be participatory and transparent as much as possible, including all shareholders. Legal arrangements are not sufficient in and of themselves; many of the arising problems regarding the Internet have to do with enforcement/application. Courts dedicated to the Internet are a necessity, along with judges, prosecutors and expert witnesses who specialize in online affairs.



2) TURKISH INTERNET LAW

The Turkish Internet Law (No. 5651) went into effect with its publication in the Official Gazette in May 2007 and governs “the regulation of publications on the Internet and fighting crimes committed through these publications.” This law aims to set forth the basics and methods when it comes to the responsibilities and duties of content, space and usage providers and countering the usage of these spheres to commit crimes.

Regulations Introduced by Law No. 5651

Law No. 5651 was introduced with the goal of preventing crimes committed through publishing on the Internet. These crimes are an important part of the public agenda -- especially with the spread of child pornography -- and so legislation on these topics have proceeded rather quickly.

Turkish Internet access bans are put in place when there is sufficient reason to suspect the commission of a crime, as specified in Article 8 of this law. These crimes are broken down into two fundamental types:

a) Described as catalog crimes, the following eight types of online crime are listed in Turkish Penal Code (TCK) No. 5237, dated Sept. 26, 2004:

- Inducement toward suicide (Article 84),
- Sexual abuse of minors (Article 103, first clause),
- Facilitating use of drugs or stimulants (Article 190),
- Provision of materials harmful to health (Article 194),
- Obscenity (Article 226),
- Prostitution (Article 227),
- Securing a location and means for gambling (Article 228).

b) Crimes under Law No. 5816 dated June 25, 1951, which concern crimes against Atatürk.

The decision to block access to websites that have been proven to commit one of these crimes is made by a judge in the case of an investigation and by a court in the case of prosecution. Courts and the Telecommunications and Communications Ministry have the ability to close down websites that contradict the law. Decrees to block access are implemented within 24 hours.

Criticism of the Law

With its speedy passage in 2007, Law No. 5651 has been the subject of heavy criticism due to some negative aspects with regard to its implementation. This law began as an effort to protect children from harmful content and prevent the encouragement of suicide, prostitution and drug use, but over time the law paved the way for applications that would restrict a societal right, to have access to information. Some prohibitions that are put into effect under the scope of the law are reminiscent of political censorship methods. As it



currently stands, Law No. 5651 seems to be designed without a good grasp of the Internet's structure.

Some of the rules introduced by this law conflict with the freedom-based nature of the Internet and result in various problems. The best known example of this amongst public is the ban on access to YouTube. At the root of this problem are demands made by regulations under Law No. 5651 that are not valid in international law.

There is a demand for hosting providers in Turkey to apply and register with the Information Technologies and Communications Authority (BTK) and display the contact information online for both content providers and hosts. This would mean the registration of all those responsible for website creation and content in Turkey, which is technically impossible to implement.

In the case of catalog crimes, the Telecommunications Directorate has the absolute authority to ban sites if they are based abroad. This practice contradicts the constitution's universal law and the fundamental principles of rulings by the European Court of Human Rights. There is no practical counterpart on the Internet for the concept of "abroad" theoretically speaking. According to the current understanding in Turkey, in order to be considered a domestic website, it must be registered with the BTK.

For non-catalog crimes, contradictory rulings are sometimes issued when it comes to requests for access bans. While the rulings of criminal courts on access ban petitions are automatically accepted and implemented, this does not always happen in cases where the requests involve the usurpation of intellectual property rights and the violation of rights ensured by marital and family law. Also, it is not known precisely how many websites have been banned due to issues regarding intellectual property rights and family law.

Access ban rulings sometimes result in practices that ignore the personal nature of a crime and create problems for users. Shutting off access to an entire website due to a small bit of content can lead to far greater problems.

In blocking access to websites in Turkey, the Domain Name or Internet Protocol (IP) methods are employed. A domain name is a website's online name and address. An IP address is the simplified version of a numbering system that computers use to recognize one another. A website determined to be in violation of the law can have access to its blocked domain. When the IP is blocked, however, all websites that publish via that IP are affected by this situation.

Should you liken an IP to the address of a business center and the domain name to one of the shops there, then using the IP blocking method is analogous to shutting down an entire business center because of violations committed in one workplace.

With today's technology, it is possible to block offensive content only, instead of blocking an entire publication or website. This is called object-based blocking.

Nevertheless, in order for such a system to function, the required infrastructure is



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both very expensive and slows down the Internet considerably as a control mechanism. Thus, it is preferable not to adhere to any access blocking and censorship-type models.

“Illegal content” and “harmful content” are still difficult to distinguish adequately in today’s world and have been the subject of a great deal of legal work in the fight against online crime. The Council of Europe’s Convention on Cybercrime brings a clear framework to this issue. The content outside of child pornography, hate crimes, terrorism propaganda, gambling, prostitution, illegal organ trade, user rights and information crimes falls into the category of freedom of expression.

Law No. 5651 has also drawn harsh criticism from Europe. Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, Miklos Haraszti, has issued a call for Turkey to change its Internet legislation and pledges it has made to the OSCE to reflect international standards.⁸

The second “Internet Content Regulation” workshop held on April 20-22, 2010, at Kartepe in Kocaeli debated problems related to Law No. 5651 and the Internet access restrictions stemming from it. The workshop ended with the publication of the Kartepe Criteria in a 94-article document that was created in three days by 65 individuals from 40 different institutions.⁹



3) SAMPLE CASE: THE PROBLEM OF YOUTUBE AND GOOGLE

YouTube

YouTube, which features user-driven video-sharing content, was established as a website in 2005 by three young former PayPal employees in a \$11.5 million investment. Heavy interest in YouTube drove the project to a rapid growth, and in 2006 it was sold to Google Inc. for \$165 billion. The American company is based in San Bruno, California. The majority of content published on YouTube is uploaded by individual users throughout the world. In addition, some professional media companies have entered into cooperation with YouTube and they share their own content. According to the research by the comScore firm dated May 2010, YouTube accounts for nearly 43 percent of the US online video sharing market, and in that month a total of 14 billion videos were watched via the website, with a total of 24-hour long video uploaded to the site each minute, and over two-thirds of this content originating from outside the United States. According to Alexa data, YouTube is the third most frequently visited website in the world, coming after Google and Facebook.

Along with the extreme interest it has attracted since its foundation, YouTube has also drawn various criticisms during this time. At the base of these criticisms are the publication of videos that promote violence and hatred, contain discriminatory elements or violate user rights. In order to be able to fight these sorts of problems, YouTube currently has a system where users can flag inappropriate content that they believe needs to be removed from the website. In addition, YouTube recognizes the “cyber crimes” as laid out by the United Nations and European Union and does not allow videos involving such criminal content to be published on its site. Despite this, YouTube has been censored many times in various countries, including Turkey. YouTube remains officially banned in China, Iran, Libya, Tunisia, Turkmenistan and Turkey.

The Problem of Access Block to YouTube from Turkey

Access to YouTube was first blocked in 2007 by the İstanbul 1st Criminal Court of Peace due to videos that contained insults to the person of Mustafa Kemal Atatürk. When YouTube removed the content from its website, access was granted once more. However, similar videos were uploaded to YouTube again in 2008, therefore the ban was reinstated, and a Turkish prosecutor announced that as long as the offensive videos were not removed entirely from YouTube’s global database, the ban would remain indefinitely in place. As YouTube has no official representation in Turkey, these calls to remove the videos have not been resolved.

As a result of this, Turkish courts issued a precautionary ruling regarding YouTube. No cases have been filed within the framework of international legal norms against any person or persons uploading videos to YouTube, or against the firm itself. As there has been no period of adjudication, the temporary court decision has been applied for over two years. As the case has not been taken to the Supreme Court of Appeals, the uncertainty still remains. Another factor that perpetuates this problem is the fact that YouTube does not have a representative in Turkey, who will attend to this issue and address it officially.



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Google

Google was founded in California, USA, in 1998 and is an Internet search and advertising firm open to the public. It directs Internet traffic with over 1 million computer servers around the world. Google responds to over 1 billion global Internet search requests each day. The interest shown in Google as a search engine quickly led to the firm's rapid growth and expansion of its investments outside the realm of search engines to include online advertising, social sharing networks, e-mail, photograph and VoIP applications. The Nexus One telephone that was presented to the market last year has become the most serious rival of the iPhone. According to Alexa data, Google is the world's most-frequented website.

Due to its size, Google has been the target of strong criticism in many countries. Among the most serious of these criticisms is the claim that Google takes advantage of individual privacy laws, laws related to freedom of thought, and international tax laws by paying very little tax in the nations in which it operates.

The Problem of Access Block to Google Services from Turkey

Most of the 44 IP addresses YouTube uses in Turkey belong to Google. Following the beginning of access bans in 2006, Google reassigned some of its own IPs to YouTube in an effort to make YouTube accessible in Turkey once again. However, the BTK intervened again by banning the IPs that had been assigned to YouTube as well. As a result of this intervention, some services of Google – such as Google Translate, Maps, Docs, Code and Analytics – stopped working. This led to the public perception that Google, too, had been banned.

In a press statement, the BTK made clear that news stories reporting that access to Google services had been blocked through an access ban decision were not true. The BTK emphasized that the problem was due to the updating of IPs serving access to the banned <http://www.youtube.com> and the fact that the IP addresses in question either belonged to different companies or were used to host multiple services.¹⁰

As for Google, it released a statement on the subject saying that the problem of having access to Google services in Turkey was related to the ongoing ban on Youtube.

At the root of the problem of banned access to Google services from Turkey is Law No. 5651 and the access ban on YouTube. According to some claims, Google wanted to make sure Turkey was criticized for censorship and therefore changed the IP addresses to draw attention to the issue again. Therefore, it is claimed that Google only switched free services from which it cannot derive any advertising revenue to the blocked set of IP addresses. According to this view, then, the problem is purely economic.¹¹

Following these developments, officials made public statements pointing out that Google was a company that paid no taxes in Turkey, leading to an understanding on the part of some that the problem of access block on YouTube was because Google didn't pay taxes for it. But in reality the access issue and the tax issue are two separate topics. The access ban has to do with freedom of expression, while the tax issue concerns the Finance Ministry.



Google and the Tax Problem

Among the most important problems in the Internet arena is the tax issue. The Internet's international structure has caused the problem related to digital products, that can easily bypass the customs house, to become seriously complicated.

Google's tax issue has long been debated, not just in Turkey, but in many nations, especially in Europe. At the root of this problem is the fact that in return for the services it provides, Google does its billing in Ireland and pays very little taxes to the countries in which it operates as a service provider.

As Ireland's system of taxation is more profitable than those in other European countries, Google does all its billing based in Ireland. At the same time, Ireland has become the center for production, packaging and distribution for many international information firms due to the low taxes it levies in the information field along with other incentives. The tax rate in Ireland is 12.5% whereas in other European countries this rate reaches up to 30%. But more questions have arisen, as Google Ireland's owner has another Google company established in Bermuda, famous for its status as a tax haven.¹²

Some European nations, such as England¹³, Spain¹⁴ and France¹⁵, have made Google's low taxes the subject of heavy criticism. These countries are drafting various legal sanctions and are working to produce alternative systems of taxation.

As for the People's Republic of China, it banned Google for political and economic reasons at the beginning of 2010. In response, Google shut down its office in China and began running its services from Hong Kong, where Chinese law does not bind.



4) VIEWS AND RECOMMENDATIONS

The Internet is a common space shared by all citizens of the world. It has no central system of governance or administration. Prohibitions and regulations regarding freedom of expression do not apply in this sphere. This reality must not be overlooked when considering all manners of legal regulation. For a social state that places importance upon democracy and information technologies, the priority should be devising solutions that will bring uncensored and cheap Internet access to all of its citizens. Within this context we recommend;

- Specialized expert courts should be established to deal with Internet-related issues. Specialization in online law should be assigned importance by the judiciary, and the system of expert witnesses should be made more functional.

- Websites that play a major role in the dissemination of thoughts and ideas on the Internet (such as blogs, forums, video-sharing and social networking sites, etc.) should be evaluated as part and parcel of democracy and pluralism. Ideas that do not incite violence or criminal offense should be seen through the context of freedom of expression. Sanctions that ought to be applied in situations where the Internet has been abused and caused harm to individual freedom and rights should not negatively affect Internet users' basic rights and freedoms.

- The Notice and Take Down principle appears to be the best solution when it comes to preventing illegal content from surfacing online, while also avoiding the obstruction of freedom of thought. Support should be provided to civilian initiatives to block access to sites with questionable content.

- It is clear that censorship is an ineffective tool when it comes to fighting cybercrime. Rulings to block access should only be seen as the last solution and a temporary precaution within the limits of a well-proportioned and reasonable manner. Websites should not be shut down in their entirety.

- It is very important to regulate the Internet as little as possible and to set technology free whereas the process of legislation along with enforcement should be participatory and transparent including all shareholders.

- With an eye on the Internet's international nature, when fighting cybercrime international cooperation ought to be ensured, and the catalog crimes in Law No. 5651 should be re-evaluated. New regulations should be enacted to prevent illegal organ trade and identity theft. Signing the Council of Europe's Convention on Cybercrime is a very important step in this regard.

- In order to protect minors from harmful online content, content ratings ought to be developed by experts, and families must utilize free child filters for the Internet.

- Online journalism ought to be clearly defined, and accreditation ought to be ensured for journalists at online news outlets and in public institutions and establishments. Internet journalists should be able to benefit fully from all the rights and freedoms provided for other journalists under the law. Internet publishing should also be represented at the BİK.



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